IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4819 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YSUFBHAI NOORMOHMAD MUKHI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YM THAKKAR for the Petitioner.

Ms.Sonal Vyas, Assistant Government Pleader, for Respondent No. 1-2

MR HL LANGHNOJIA for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2002

ORAL JUDGEMENT

The petitioner is running a restaurant, in the

name and style of "Pleasant Hotel", which is situated at village Markarba, Taluka, City, Ahmedabad. The said premises is situated in Survey No.42 of the aforesaid village. The petitioner has taken the aforesaid premises on rent from his original landlord, i.e. respondent No.3 herein. The petitioner had taken the aforesaid premises on rent for the purpose of running a restaurant. The petitioner, after taking the premises on rent from the aforesaid purpose, applied for necessary licence and for that purpose, application was submitted to the Sub Divisional Magistrate, Taluka, City Ahmedabad, and the Sub Divisional Magistrate, Ahmedabad, granted licence to the petitioner for running the said restaurant, by his order dated 27.4.1979. The said licence was given to the petitioner under the provisions of Section 33(1)(w) of the Bombay Police Act, 1951. The said licence was therafter renewed from time to time. Thereafter, in the year 1989, the petitioner applied for certification of registration and the District Magistrate issued the said Certificate of Registration from 1989 to 31st December, 1994. The said Certificate of Registration is also annexed by the petitioner at page 10 of the compilation (Annexure 'B').

The petitioner, subsequently, applied for renewal of the aforesaid registration for a further period of four years, i.e. from 1995 to 1999. The petitioner gave necessary application after paying required fees for the same. The petitioner also gave specific application to the Sub Divisional Magistrate, Taluka, City, Ahmedabad, vide application dated 31st January, 1995. However, the Sub Divisional Magistrate rejected the said application for renewal of the said licence by an order dated 6.2.1997 on the ground that the landlord of the premises objected for such renewal. The petitioner was also asked to produce N.A. permission order, but since the petitioner was not the owner, naturally, he could not produce the aforesaid document of N.A. permission, which is granted by the Competent Authority.

The said decision of the Sub Divisional Magistrate was challenged by the petitioner by filing an appeal before the District Magistrate, Ahmedabad and the said appeal was numbered as Appeal No.5 of 1997. The Appellate Authority partly allowed the said appeal and remanded the matter to the Sub Divisional Magistrate. After the said remand, the Sub Divisional Magistrate, Ahmedabad, passed a fresh order dated 6.2.1997, which is at Annexure 'D', page 12 of the compilation. The Sub Divisional Magistrate, Ahmedabad, rejected the prayer of the petitioner for renewal on the ground that the

petitioner has not produced any documentary evidence to show that permission was granted to him for commercial use at the time of getting N.A. permission.

The said order was again challenged by the petitioner before the District Magistrate by way of Appeal No.14 of 1997. The District Magistrate, Ahmedabad, dismissed the said appeal by his order dated 16.5.1998. The aforesaid decision, which is produced at Annexure 'G' (page 17 of the compilation) is challenged at the instance of the petitioner by way of this petition.

At the time of hearing of this petition, it is argued by Mr.Thakkar, learned Advocate for the petitioner, that since 1979, the petitioner is running a hotel in the said premises, that while doing his business, the petitioner is not creating any nuisance nor is he creating any obstruction in any manner. He further submitted that there is no complaint from any neighbourhood occupants. Mr.Thakkar also further submitted that in the very same Survey No.42, there is another hotel, which is occupied by another person. He also further submitted that whether there is any breach of N.A. condition or not is not a ground for refusing the application of the petitioner, which is submitted under the Bombay Police Act, and it is for the Competent Authority under the Land Revenue Code to take appropriate proceedings in case condition of N.A. is not fulfilled by the occupant at the time of getting such permission. It is also submitted by him that the petitioner, being a tenant, cannot produce the N.A. permission order, as the same is in favour of the original landlord and, naturally, the petitioner cannot have any custody of such document. It is, therefore, submitted that the orders of the authorities below are required to be quashed and set aside as the authorities have ot taken into account the relevant facts and circumstances of the case before rejecting the application of the petitioner for renewal of the licence.

Ms.Sonal Vyas, learned AGP, has submitted that since there is nothing on record to show that the N.A. permission was granted to the original owner for commercial purpose, the authorities were justified in not renewing the licence of the petitioner.

I have heard advocates of both the sides, in detail.

The following salient features are required to be

taken into consideration :-

(1) As back as in the year 1979, the petitioner was granted licence by the authority under the Bombay Police Act for running restaurant;

(2) The premises being a rented premisses, the petitioner is not in a position to produce relevant documentary evidence in the nature of N.A. permission, etc.;

(3) there is no complaint from any neighbourhood about any nuisance or obstruction, which can be attributed to the present petitioner for the purpose of running his business; and

(4) The authorities below considered certain documents in the nature of N.A. permission etc., but such document is, admittedly, not given to the present petitioner and such documents, therefore, naturally are not part and parcel of the present proceedings.

So far as the relevant provision under the Bombay Police Act regulating such licence is concerned, the same is provided in Section 33(1)(w) of the Act. Section 33(1)(w) reads as under :-

> " ... ...
>
> 33. (1) The Commissioner, with respect to all or any of the following matters specified in this sub-section and the District Magistrate, with respect to all or any of the said matters except the matters referred to in sub-section (1AA), may make, alter or rescind rules or orders not inconsistent with this Act, in areas under their respective charges or any part thereof, namely:-
>
> xxx xxx xxx
>
> (w)(i) licensing or controlling places of public amusement or entertainment;
>
> (ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in

the vicinity;

xxx xxx xxx

... ..."

It is not in dispute that the landlord of the premises did not agree for renewal of such licence, obviously because, he is interested in getting back the possession of the premises. For that purpose, he has already instituted a suit for taking possession, which is pending before the Competent Court. Whether the petitioner has made certain construction unauthorisedly etc., without the consent of the landlord, is the ground available to the landlord in the eviction proceedings. However, in my view, the landlord has objected for renewal of licence is no ground to reject the prayer of the petitioner for renewing the said licence. It cannot be said that the petitioner is creating any obstruction, or inconvenience or annoyance or there is a danger or damage to the residents or passengers in the vicinity if the petitioner is allowed to continue the aforesaid hotel business. The Police Authorities are required to consider only the aforesaid aspect as per the rules and provisions of the Act for the purpose of renewing or granting licence for the purpose of public amusement or hotel, as the case may be. The petitioner is running the said hotel as back as from 1979 and when the petitioner has already specifically stated before the authority that he does not possess necessary document of N.A. permission, it was not expected from him to produce such copy, as it is in the possession of the landlord. Even in the earlier order, the District Magistrate itself has found, at the time of hearing Appeal No.5 of 1997, that even in the revenue record, there is a mention of hotel construction. Even if there is a breach of the N.A. permission, it is for the Competent Authority under the Land Revenue Code to take appropriate action against the owner of the premises, either for cancelling the N.A. permission or for imposing any fine, as per the provisions of the said Act. Even that position continued when the petitioner was initially granted licence in the year 1979 and, therefore, at the time of renewal, it was not expected from the authorities to reject the renewal relying on the aforesaid aspect and the Authority under the Bombay Police Act is required to consider the application as per the provisions of the Act and decide granting or renewal of the application only as per the statutory provision of the Act. So far as N.A. permission or breach of N.A. permission is concerned, it is for the revenue authorities under the Land Revenue

Code or any other provisions of law to take appropriate action for breach of N.A. permission, but solely on that ground, renewal application was not required to be rejected by the authority. Even apart from the aforeaid aspect, the authorities have considered the documentary evidence in the nature of granting N.A. permission to the original owner. However, that document is not even made available to the petitioner and, therefore, naturally, it was not possible for him to offer any comment about the condition prescribed in the N.A. permission. Even the authorities have not considered the extract from the revenue record. Even assuming that there is a breach of the N.A. permission, the action is required to be taken by the revenue authority against the original owner by cancelling N.A. permission. The original owner, therefore, cannot be allowed to go scot-free as he himself has put the premises to commercial use and if there is any breach of N.A. permission, it is he who is responsible for the same. In view of that, it will be open for the revenue authority to take appropriate proceedings against the owner, to whom the N.A. permission is granted, if it is found that he has committed breach of N.A. permission, but, for that reason, it would not be just and proper to penalise the petitioner by not renewing the licence which was granted to him as far back as in the year 1979. In view of the aforesaid facts and circumstances of the case, in my view, the orders passed by the authorities below are required to be quashed and set aside as the relevant facts and circumstance of the case have not been taken into consideration.

It is clarified that if the petitioner has committed any breach of the terms of the tenancy, it will be open for the landlord to take appropriate proceedings before the Rent Court and this Court is informed that such proceedings are already pending and, therefore, naturally, if there is any breach of the aforesaid terms, it is for the appropriate court to deal with the said question in accordance with law. This petition is restricted only to renewal of licence to the petitioner for running his hotel business.

Under the aforesaid circumstances, the petition is allowed. The matter is now sent back to the Sub Divisional Magistrate, Ahmedabad City, for passing appropriate order on the application of the petitioner for renewal of his licence. Fresh decision may be taken on the application of the petitioner keeping in mind the observations made by this Court hereinabove.

The Sub Divisional Magistrate may accordingly now proceed with the said application in accordance with law and pass appropriate order. However, while deciding the said application for renewal, the observations, as stated earlier, may be taken into account and, ultimately, fresh decision may be taken considering the facts and circumstances of the case and as per the available material on record. Such fresh decision, after hearing the concerned parties, may be taken within a period of three months from the date of receipt of the writ of this Court.

The petition is allowed to the aforesaid extent. Rule is made absolutely accordingly, with no order as to costs.

(P.B. Majmudar, J.)

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(apj)